

C A N A D A

SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC

N° :

Me GENEVIÈVE MOTARD, domiciled and
[REDACTED]

MR. PATRICK TAILLON, domiciled and
[REDACTED]

Plaintiffs

v.

ATTORNEY GENERAL OF CANADA, 285,
Wellington Street, Ottawa (Ontario) K1A
0H8

Defendant

**MOTION TO INSTITUTE PROCEEDINGS FOR DECLARATORY JUDGMENT
(s. 52(1) C.A. 1982, 453 C.C.P.)**

THE PLAINTIFFS RESPECTFULLY SUBMIT THE FOLLOWING:

1. The Canadian Parliament passed the *Succession to the Throne Act, 2013* (the "Act"), S.C. 2013, c. 6, which received royal assent on March 27, 2013.
2. The Act provides for the assent by the Parliament of Canada to a British Bill regarding the succession to the Throne, introduced in the Parliament of the United Kingdom on December 13, 2012. Section 2 of the Act reads as follows :

"2. The alteration in the law touching the Succession to the Throne set out in the bill laid before the Parliament of the United Kingdom and entitled A

Bill to Make succession to the Crown not depend on gender; to make provision about Royal Marriages; and for connected purposes is assented to."

3. The short title of the British Bill is the *Succession to the Crown Act 2013*. This bill was passed into law subsequent to the adoption of the Act. It received royal assent on April 25, 2013 (hereafter the "**British Act**").
4. The Act amends the Constitution of Canada. Its purpose is to amend the rules of the Constitution of Canada regarding the designation of the head of state of both federal and provincial orders of government.
5. The laws in relation to the designation of the head of state and his or her representatives, the Governor General and the Lieutenant Governor, are of a constitutional nature in Canada, as confirmed by case law.
6. The aim of the present Motion is not to contest the political decision to amend the rules regarding the designation of the head of state, but rather to ensure that such amendments are made in compliance with the Constitution. Amendments to Canadian law in relation to the succession to the Throne are governed by Part V of the Constitution Act, 1982, entitled Procedure for Amending the Constitution of Canada.
7. Part V includes section 41, wherein section 41(a) requires resolutions of the Senate, the House of Commons, and the legislative assemblies of each province, including the National Assembly of Quebec, for any amendment to the Constitution of Canada in relation to the office of the Queen, the Governor General and the Lieutenant Governor.
8. The Act is incompatible with section 41 as it does not follow the amending procedure and no resolution has been passed by the legislative assembly of any province.
9. The office of the Queen is the constitutional foundation for Canada's executive and legislative authority in both provincial and federal jurisdictions.
10. The Act is therefore also incompatible with the organizing principles of the Constitution that are the rule of law, the principle of federalism and the principle of the honor of the Crown.
11. Consequently, the Act is unconstitutional.

SUBSIDIARILY :

12. If the Act does not amend the Constitution of Canada, it is subject to it.
13. The *Canadian Charter of Rights and Freedoms* is part of the Constitution.
14. The Act gives assent to the British Act, which maintains an express prohibition of persons of the Catholic faith, and only those persons of said faith, from becoming King or Queen of the United Kingdom, and therefore of Canada. This prohibition dates from the Bill of Rights, an act of the British Parliament sanctioned in 1689 (1 William & Mary Sess. 2 c. 2).
15. Consequently, a person of Catholic faith can never become Canada's head of state.
16. Moreover, the British Act maintains the requirement that the King and Queen of the United Kingdom, and therefore of Canada, adhere to the Anglican Church. This requirement dates from the Act of Settlement, an act of the British Parliament adopted in 1701 (12 et 13 Will 3 c.2).
17. As a result, a non-believer, or member of any religion other than that of the Anglican faith, cannot become Canada's head of state.
18. These requirements constitute a discrimination that is contrary to the freedom of conscience and religion and the right to equality guaranteed by sections 2 and 15 of the *Canadian Charter of Rights and Freedoms*.
19. The Act gives the assent of the Canadian Parliament to a British Act that is contrary to the *Canadian Charter of Rights and Freedoms*, rendering the Act inoperative.
20. Furthermore, section 133 C.A. 1867 and section 18 C.A. 1982 require that federal Acts be adopted in both of Canada's official languages.
21. It is well established in jurisprudence that the requirement of legislative bilingualism extends to any document to which a federal Act makes reference.
22. The Act gives assent to a British Act written only in the English language.
23. There is no French version of the British Act to which the Act refers.
24. The Act is incompatible with section 133 C.A. 1867 and section 18 C.A. 1982.

25. The Act is therefore unconstitutional for this reason as well.

26. A motion for declaratory judgment is the appropriate means for the present action.

27. The plaintiffs have standing in this matter, which is of public interest. The plaintiffs are Canadian citizens. They are legal scholars, doctors at law and academics who are active in the area of constitutional law.

28. The present Motion is well-founded.

WHEREFORE, MAY IT PLEASE THIS COURT TO:

GRANT the present Motion;

DECLARE the *Succession to the Throne Act, 2013* unconstitutional and of no legal effect as it was sanctioned in violation of the procedure under s. 41(a) C.A. 1982.

DECLARE the *Succession to the Throne Act, 2013* unconstitutional and of no legal effect as it violates the organizing principles of the Constitution that are the rule of law, the principle of federalism and the principle of the honor of the Crown.

SUBSIDIARILY:

DECLARE the aforementioned Act unconstitutional and of no legal effect as it is incompatible with sections 2 and 15 of the *Canadian Charter of Rights and Freedoms*;

AND DECLARE the aforementioned Act unconstitutional and of no legal effect as it is incompatible with section 133 C.A. 1867 and section 18 C.A. 1982.

THE WHOLE with costs.

Québec, June 6th, 2013

Joli-Cœur Lacasse S.E.N.C.R.L.
(André Joli-Cœur and Alexandre Brousseau)
 Plaintiff's Attorneys

André Binette, legal advisor

DS Welch Bussi res

NOTICE TO DEFENDANT
(section 119 C.C.P)

TAKE NOTICE that the Plaintiff has filed this application with the Registry of the Superior Court for the judicial district of Quebec.

To file an answer to this application, you must first file a written appearance, personally or by lawyer, at the Quebec courthouse located at 300, boulevard Jean-Lesage, Quebec (Quebec) G1K 8K6, within ten (10) days of service of this motion.

If you fail to file an appearance within that time limit, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an appearance, the action or application will be presented before the Court on **July 18th 2013, at 9:00 a.m., in room 3.14** of the courthouse. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you make a written agreement with the Plaintiff or the Plaintiff's lawyer on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

Request for transfer of a small claim

If the amount claimed by the Plaintiff does not exceed seven thousand dollars (\$7 000.00) without taking into consideration the interests, and if you could have filed such an action had you been a Plaintiff in a Small Claims Court, you may make a request to the clerk for the action to be disposed of pursuant to the rules of Book VIII of the *Code of Civil Procedure* (R.S.Q., c. C-25). If you do not make such a request, you could be liable for costs higher than those provided for in Book VIII of the Code.

Qu bec, June 6th, 2013

Joli-C ur Lacasse S.E.N.C.R.L.
(Andr  Joli-C ur and Alexandre Brousseau)
Plaintiff's Attorneys

**André Binette, legal advisor
DS Welch Bussi res**